Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

.....TERM.....

No...77-1211

LINDA FAY REGENOLD,

Appellant,

v.

THE BABY FOLD, INC., A CORPORATION, ET AL.,

Appellees.

APPEAL FROM THE SUPREME COURT OF ILLINOIS

JURISDICTIONAL STATEMENT

CRAIG HOMER GREENWOOD
Attorney At Law
206 Albert
Bloomington, Illinois 61701

Attorney for Appellant,
LINDA FAY REGENOLD

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JURISDICTIONAL STATEMENT

Pursuant to Rules 13(2) and 15 of the Rules of the Supreme Court of the United States, appellant, Linda Fay Regenold, files this statement of the basis upon which it is contended that the Supreme Court of the Unites States has jurisdiction to review the judgment entered by the Supreme Court of Illinois in this case and should exercise such jurisdiction herein.

OPINIONS BELOW

The appellant, Linda Fay Regenold, filed a petition for a writ of habeas corpus in the circuit court of McLean County, Illinois, in the Eleventh Judicial Circuit of the State of Illinois. She alleged that she was deprived of the custody of her infant son by the Baby Fold, Inc. After a trial before the Honorable James A. Knecht the trial court found that the consent to adopt signed by the appellant, Linda Fay Regenold, was invalid in that it was not executed as her free and voluntary act and ordered that the infant son be returned to his mother (Appendix A).

A timely appeal was filed with the Appellate Court for the Fourth District of the State of Illinois. The judgment of the trial court was reversed by a split decision dated September 30, 1976 (Appendix B).

A timely appeal was filed with the Supreme Court of the State of Illinois. The judgment of the Appellate Court for the Fourth District of the State of Illinois reversing the decision of the trial court was affirmed by a split decision dated September 20, 1977 (Appendix C).

A timely petition for rehearing was filed with the Supreme Court of the State of Illinois. The petition for rehearing was denied and the mandate issued on December 2, 1977.

GROUNDS OF JURISDICTION OF SUPREME COURT

This appeal arises from an action by a natural mother to regain custody of her natural son by a petition for a writ of habeas corpus which was granted by the Circuit Court for the Eleventh Judicial Circuit of the State of Illinois, which was reversed by the Fourth District Appellate Court of the State of Illinois, which was affirmed by the Supreme Court of the State of Illinois, which denied the petition for rehearing.

The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code, Section 1257(2).

QUESTIONS PRESENTED

I

By upholding the validity of the adoption statute, by repudiating the totality of circumstances approach, by considering only unlawful and illegal actions of duress, and by ignoring the voluntariness of the consent, did the decision of the Illinois Supreme Court violate the appellant's constitutional rights of due process and equal protection?

II

When the Illinois Supreme Court recognized adoption to be a creature of statute, stated that the legislature must prescribe the procedures, and then failed to see the applicability of constitutional rights, to those procedures, did the Illinois Supreme Court fail to identify the appellant's constitutional rights to due process and equal protection?

III

Must not a consent to adopt be voluntarily and understandingly executed to be constitutionally valid?

STATEMENT OF THE CASE

The Petitioner, Linda Fay Regenold, is the 19-year-old natural mother of the infant, Jason Robert Regenold, who was born on August 2, 1974. On October 20, 1975, when she contacted The Baby Fold, Inc., she was under the following pressures:

First, she faced the trauma of a most recent divorce.

Second, her husband was unable to accept the finality of divorce and would send letters addressed to both Linda and to the child indicating his continued love;

Third, Linda faced the adjustment to added responsibilities and a new position at work;

Fourth, she faced the stresses of motherhood and raising an infant;

Fifth, Linda was under medication and was of the belief that if her condition was not remedied, she would face an operation and receive a partial hysterectomy;

Sixth, the added to Linda's already severe financial difficulties in that she had to pay her divorce attorney and the hospital and the doctor for Jason's bill as well as for her automobile transportation to and from work and in addition, rent to her mother for living with her mother and father;

Seventh, Linda had conflicts with her mother over the responsibility of rearing her three-year-old brother who at times was a threat to the security of Jacon;

Eighth, Linda's mother was divorcing her father and kept moving up the date on which she felt that Linda would have to get out of the home;

Ninth, Linda would often argue with her mother over the subject of finances and the paying of the babysitter and her rent at home;

Tenth, Linda's mother and father would constantly argue. Linda's home was in constant state of turmoil. When Linda's mother directed her attention to Linda it was only in a degrading and belittling fashion in which she severly questioned Linda's capability.

These pressures were established by the testimony of Linda, her aunt, her father, her brother, a close friend and fellow worker, and two grandparent figures, as well as by exhibits and other testimony.

As a result of these pressures, a licensed physician and psychiatrist medically determined that on October 20, 1975, Linda was suffering under a psychological impairment - specifically an adjustment reaction, or as it is also called, a transient situational disturbance. The four phases of a transient situational disturbance are the anticipatory, the impact, the recoil and the post-traumatic. That Monday, Linda had begun the impact phase which is the most severe phase in

affecting one's reasoning and rational behavior. When she called the Baby Fold, Inc., on October 20th, Linda was experiencing an extreme amount of environmental stress and pressure as well as her own internal turmoil and insecurity. She was reaching out for help. She was acting under compulsion and attempting to seek order and security. She was not acting freely in that she was acting in a style different than each and every major decision in her life to date.

The trial court held that the surrender was invalid in that it was not executed as the free and voluntary act of the Petitioner. Her action in signing the surrender was held to be neither voluntary nor understanding. She was not exercising her own free will. Her actions were a product of duress. The trial court found that The Baby Fold, Inc., by failing to make meaningful attempts to solve the Petitioner's problems, by acting with unseemly haste in taking the surrender and by accepting a surrender from someone subject to the assorted pressures facing the Petitioner, became an active participant in the chain of events which denied the Petitioner the exercise of her free will and deprived her of her infant son. The trial court held that the totality of the circumstances in this case prevented the Petitioner from exercising her free will, and placed her under extreme duress thereby rendering the surrender invalid.

The federal questions of due process and equal protection under the United States Constitution were both raised by the pleadings at the trial court level.

The dissenting opinion of the Fourth District Appellate Court recognized the raising of the Constitutional issues at the trial court and also at the appellate court level. (A-18.) This same dissenting opinion expressed great concern over the Constitutional issues raised (A-18 to A-21). However, the dissenting opinion did not consider these Constitutional issues although discussing them at length. The dissenting Justice would have affirmed on other than Constitutional grounds although he did indicate that such an affirmation should be made in the context of due process and equal protection guarantees (A-21). The majority opinion at the Fourth District Appellate Court also addressed the issue of the Constitutionality of the adoption statute (Appendix D). The majority opinion indicated that the appellant persuasively argued the unconstitutionality of the statute under both equal protection and due process (A-10). The majority opinion entertained serious doubts as to the Constitutional validity of the statute (A-11). However the opinion of the majority opinion did not resolve that issue.

The Illinois Supreme Court was divided in rendering its decision. However, only a majority opinion was filed. That opinion disclosed that the court did not recognize a violation of Constitutional rights (A-39). The majority opinion spoke of adoption as a creature of statute and the legislature therefore being able to prescribe the procedures (A-39). The court felt that the recent enactments by the legislature indicated a repudiation

of the totality of circumstances approach (A-39). Therefore in determining the validity of a consent for adoption the majority would consider only the unlawful acts of those taking the consent to adoption (A-34 to A-39).

SUBSTANTIALITY OF FEDERAL QUESTIONS

This appeal presents important and substantial questions, as hereinafter described, in that the Illinois Supreme Court upheld as valid a consent to adopt which was neither voluntarily executed nor understandingly made, in clear violation of the natural mother's rights of equal protection and due process under the United States Constitution.

The guarantee of due process of law will not allow the deprivation of a fundamental interest. And the rights to conceive and to raise one's children have been deemed "essential." MEYER V. NEBRASKA, 262 U.S.390, 399 (1923). Or one of the "basic civil rights of man." SKINNER V. OKLAHOMA, 316 U.S. 535,541 (1942). The "custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." PRINCE V. MASSACHUSETTS, 321 U.S. 158, 166 (1944). Thus, in STANLEY V. ILLINOIS, 405 U.S. 645 (1972), this Honourable Court held that the rights of a natural parent are fundamental rights entitled to due process guarantees.

The question of an effective waiver of federal constitutional rights in a proceeding is governed by federal standards. BOYKIN V. ALABAMA, 395 U.S. 238 (1969). And the Courts must indulge in every reasonable presumption against the loss of these constitutional rights. ILLINOIS V. ALLEN, 397 U.S. 337 (1970), rehearing denied 398 U.S. 915 (1970).

BOYKIN was a criminal proceeding. But in civil, no less than in criminal cases, courts indulge in every reasonable presumption against the waiver of procedural due process rights. FUENTES V. SHEVIN, 407 U.S. 67 (1972).

The appellant, Linda Fay Regenold, was denied due process of law. The fundamental right to raise her infant son, as recognized in STANLEY, could only be waived in a manner governed by federal standards, as indicated in BOYKIN. The voluntariness of the waiver in BOYKIN is applicable to the appellant in this civil proceeding through FUENTES. The consent to an adoption must be voluntarily and understandingly made as an exercise of free will, just as pleas of guilty to criminal offenses are so made in the hundreds every day. It is unconscionable to hold the losing of one's child for life to a lesser standard than pleading guilty to a disorderly conduct and paying a $25 fine.

Yet the Illinois Supreme Court did not address the question of voluntariness. Nor did the Court see the existence of the applicable constitutional rights (A-39). The Court interpretted the amendments to the adoption act as a repudiation of the totality of circumstances approach by the legislature. The question thus presented is how can the voluntariness of a consent be determined without determining the totality of circumstances. The answer is simple, voluntariness can not be determined and the due process guarantees afforded the

appellant are by definition violated.

The Illinois Supreme Court did suggest that since adoption is a creature of statute the legislature must establish the applicable procedures (A-39). However the court did not recognize the applicability of Constitutional guarantees to those procedures adopted. A law or procedure can violate the equal protection clause without the showing of a compelling state interest which can be only furthered by enactment of the statute in question. Of course, this holding is dependent upon the case being won which the court subject to "strict scrutiny". SHAPIRO V. THOMPSON, 394 U.S. 618, 634 (1969). Strict scrutiny can be established by the enfringement upon a fundamental right. In this instance the fundamental right is that right to conceive and raise one's children. MEYER V. NEBRASKA, 262 U.S. 390, 399 (1923).

The question then becomes whether the state can show a compelling state interest. SHAPIRO V. THOMPSON, 394 U.S. 618, 634 (1969). And what compelling state interest can necessitate the taking of a consent which is neither voluntarily made nor understanding executed. The answer to this question too is simple, there is no such compelling state interest. The obtaining of a guilty plea in a criminal proceeding and the assurances that that plea is taken voluntaringly and understandingly is done on a daily basis in every court in this country. This procedure has not proved disruptive of the criminal justice system. How then can the employment of a similar

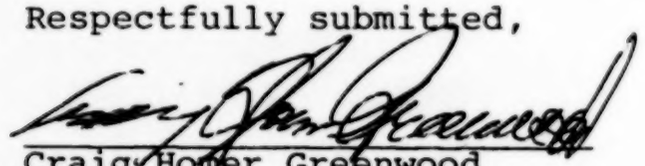
standard be disruptive of the adoption process. Of course, it can not.

CONCLUSION

For the reasons stated above, appellant submits that this appeal brings before the court substantial and important federal questions which require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Dated: February 24, 1978.

Respectfully submitted,



Craig Homer Greenwood
Attorney for Appellant

CRAIG HOMER GREENWOOD
Attorney At Law
206 Albert
Bloomington, Illinois 61701

Attorney for Appellant,
LINDA FAY REGENOLD

APPENDIX A

OPINION AND ORDER OF THE TRIAL COURT

Argued -- January 30, 1976
Decided -- February 13, 1976

BEFORE:
Hon. JAMES A. KNECHT, Associate Judge

Decision of the Circuit Court of the Eleventh Judicial Circuit of Illinois. NO. 75MR50

LINDA FAY REGENOLD, Petitioner
VS. THE BABY FOLD, INC., Respondent.

ORDER

On December 1, 1975, this court ordered the issuance of a writ of Habeas Corpus, upon the verified petition of the petitioner, commanding respondent to produce the minor child of petitioner before the court for a determination of rightful custody. Thereafter, a pre-trial conference was held, discovery was completed by the parties and evidence in the cause was heard on January 26, 1976, and January 27, 1976. On January 30, 1976, the date set for closing arguments, the prospective adoptive parents of the minor filed a motion for leave to intervene in this action. That motion was heard and allowed by the court over the objection of the petitioner. The intervenors were not allowed to present evidence, but were granted leave to

getting her child back. By October 28, 1975, an attorney representing petitioner had contacted Baby Fold seeking the return of the child. The record in this cause is replete with evidence relating to the severe family, social and environmental pressures under which the petitioner was operating when she signed the surrender document. The record is also replete with evidence concerning the procedures which the caseworker from Baby Fold followed to assure that the petitioner understood the surrender and its consequences.

The issue which the court must decide is whether the surrender is valid and in fact represented the free and voluntary act of the petitioner. The court finds, in the circumstances present in this case, that the surrender is invalid in that it was not executed as the free and voluntary act of the petitioner.

The execution of the surrender was a reaction to the severe environmental stress and pressure under which the petitioner was operating. Her action in signing the surrender was neither voluntary or understanding. There is no doubt that, in the circumstances present here, the petitioner was not exercising her own free will in signing the surrender. The emotional disturbance that she was experiencing and the environmental stress and pressure upon her combined to produce a result which was the product of duress.

submit written argument and a brief for the consideration of the court. The court then enjoined the intervenors from proceeding with the adoption of the minor until the resolution of this cause. Thereafter, closing arguments were heard and the parties submitted written briefs and authorities to assist the court in its decision.

The court, having heard the evidence and considered the arguments and legal authorities cited by the parties and being fully advised finds as follows:

On October 20, 1975, Linda Fay Regenold, the petitioner, a nineteen-year-old recently divorced mother, contacted and visited the Baby Fold, Inc., a licensed child welfare agency, relative to her infant son, Jason Regenold. The facts are in dispute as to whether the petitioner was seeking help and advice in providing proper case for her son, or whether she contacted Baby Fold with the plan of placing him for adoption. On October 22, 1975, the petitioner returned to Baby Fold with her son, signed what is entitled "Final and Irrevocable Surrender For Purposes of Adoption" and surrendered custody of her son to a worker of the Baby Fold. On October 23, 1975, the petitioner again visited Baby Fold, was informed of the placement and gave certain medical history information about the child to the staff at Baby Fold. On October 26, 1975, the petitioner visited an older married couple, who had known her since birth, and sought their aid in

Respondent argues that while the circumstances of the petitioner's own family life and relationships may have caused her to surrender her parental rights, that under the law Baby Fold, Inc. bears no responsibility for those pressures or her decision. Section 9.1-11 of Ch. 4, Ill. Rev. Stat. was amended in 1973 to provide in pertinent part:

> "A consent. . .shall be irrevocable unless it shall have been obtained by fraud or duress on the part of the person before whom such consent, surrender or other document equivalent to a surrender is acknowledged . . ."

Respondent argues that it did not obtain the consent by fraud or duress even through petitioner may have been under duress from her own parents and other circumstances. Hence, according to respondent, the surrender is valid.

The court finds, however, that the respondent by failing to make meaningful attempts to solve the petitioner's problems; by acting with unseemly haste in taking the surrender, and by accepting a surrender from someone subject to the assorted pressures facing petitioner thereby became a subtle, but active participant in the chain of events which denied the petitioner the exercise of her free will and deprived her of her infant son.

The court does not suggest that any legal fiduciary relationship existed

between petitioner and respondent. The lack of a legal fiduciary relationship, however, does not remove the professional responsibilities which respondent bears. It is noted that unfortunately respondent receives no guidance from the Department of Children and Family Services of the State of Illinois relative to the taking of consents or surrenders because that agency has failed to prepare written standards to follow as to this crucial procedure. Written standards prepared either by the Department of Children and Family Services or the respondent itself and adherence to them might well have avoided this unfortunate situation. The totality of the circumstances in this case prevented the petitioner from exercising her free will, and placed her under extreme duress thereby rendering the surrender invalid.

Accordingly, it is hereby ordered, adjudged and decreed that the surrender executed by Linda Fay Regonold is invalid and therefore void. The intervenors are ordered to immediately and without delay return Jason Regenold to the respondent, Baby Fold, Inc. and respondent is ordered to return the child to his mother, the petitioner, forthwith. There is no just reason to delay enforcement or appeal of this order.

APPENDIX B

OPINION AND ORDER OF THE APPELLATE COURT OF THE 4TH JUDICIAL DISTRICT OF THE STATE OF ILLINOIS

Argued -- August 2, 1976
Decided -- September 30, 1976

BEFORE:
Hon. HAROLD F. TRAPP, presiding Judge
Hon. JAMES C. CRAVEN, Judge
Hon. LELAND SIMKINS, Judge

Appeal from the Decision of the Circuit Court of the Eleventh Judicial Circuit of Illinois.
General No. 13704
Hon. James A. Knecht,
Associate Judge

Agenda No. 76-147

LINDA FAY REGENOLD, Petitioner-Appellee v. THE BABY FOLD, INC., a corporation, Respondent-Appellant and RICHARD RILEY and PRISCILLA RILEY, Intervenors-Appellants.

MR. JUSTICE CRAVEN delivered the opinion of the court:

This is an appeal by the respondent, The Baby Fold, Inc. (Baby Fold), and the intervenors, Richard and Priscilla Riley, of an order entered by the circuit court of McLean County after a hearing on a habeas corpus petition filed by Linda Fay Regenold, the natural mother of Jason Regenold, a minor. The trial court found

that petitioner was entitled to custody and control of the child, and ordered intervenors to return the child to petitioner. This court has stayed the trial court's order pending a decision on appeal.

On October 20, 1975, petitioner, a 19-year-old mother who had been divorced on September 23, 1975, contacted and visited The Baby Fold, a child welfare agency, relative to her infant son, Jason (born August 2, 1974). On October 22, 1975, petitioner returned to Baby Fold with her son, signed what is entitled "Final and Irrevocable Surrender For Purposes of Adoption" and surrendered custody of her son to a worker of Baby Fold. On October 24, 1975, petitioner again visited Baby Fold, was informed of the placement, and gave certain medical history information about the child to the staff at Baby Fold. On October 26, 1975, petitioner visited a married couple who had known her since birth, and sought their aid in procuring the return of her child. By October 28, 1975, an attorney representing petitioner had contacted Baby Fold seeking the return of the child. On December 1, 1975, petitioner filed a petition for a writ of habeas corpus. A hearing was conducted January 26, 1976, after which, on February 13, 1976, the trial court invalidated petitioner's surrender and consent to adoption, and ordered the child returned to petitioner.

The facts are in dispute as to the reason petitioner contacted Baby Fold. Petitioner testified that she wanted to

talk to someone. She introduced evidence indicating that she was living under a great deal of stress at the time of placement: she was a 19-year-old mother who had then been divorced for one month; her husband had communicated to her through various letters indicating that he was unable to accept the finality of their divorce; her parents, with whom she lived, constantly argued; her mother was divorcing her father, and intended to force petitioner and her child out of the home; she had to adjust to the responsibility of a new position at her job; she had conflicts with her mother over the responsibility of rearing her three-year-pld brother; the brother was a threat to her son's physical well-being; she faced various financial difficulties; she was under medication and feared that she faced a partial hysterectomy if the medication was ineffective. Psychiatric testimony was introduced which concluded that petitioner was suffering from severe stress and "transient situational disturbance." Petitioner's position is that Baby Fold brought up the subject of adoption as a solution to her problem, and that due to the severe emotional duress under which she was living and of which Baby Fold was aware, Baby Fold's hasty actions in accepting her surrender without exploring other solutions constituted fraud or duress which invalidated her surrender.

Baby Fold's position is that it did nothing out of the ordinary, and that petitioner contacted Baby Fold for the purposes of surrendering her child. Baby Fold introduced evidence indicating that

the procedure it followed is not unusual. Plaintiff was counseled on Monday, October 20, 1975, at which time she filled out and signed a family history form. A witness for Baby Fold testified that, at that time, the alternatives of short term foster care or permanent adoption were discussed. Petitioner was asked during the October 20, 1975, interview if she wanted to consider her action and someone "suggested Wednesday." Exactly what was meant by "suggested Wednesday" is unclear from the record, but apparently the phrase referred to the date of surrender of the child. On Wednesday, the surrender papers were signed and the child was surrendered. The surrender form was read to the Petitioner before she signed it.

On the basis of the evidence, the trial court invalidated petitioner's surrender stating:

"The court finds, in the circumstances present in this case, that the surrender is invalid in that it was not executed as the free and voluntary act of the Petitioner."

"The execution of the surrender was a reaction to the severe environmental stress and pressure under which the Petitioner was operating. Her action in signing the surrender was neither voluntary or understanding. There is no doubt that, in the circumstances present here, the petitioner was not exercising her own free will in signing the surrender. The emotional disturbance that she was experiencing and the environmental stress and pressure upon her combined to pro-

duce a result which was the product of duress."

Besides the problems facing petitioner as enumerated above, the trial court observed and found that Baby Fold:

"[B]y failing to make meaningful attempts to solve the petitioner's problems; by acting with unseemly haste in taking the surrender, and by accepting a surrender from someone subject to the assorted pressures facing petitioner thereby became a subtle, but active participant in the chain of events which denied the petitioner the exercise of her free will and deprived her of her infant son."

Respondent appeals, contending that the decision of the trial court is contrary to the manifest weight of the evidence. Section 11 of the Adoption Act was amended in 1973 to provide in pertinent part:

"A consent * * * shall be irrevocable unless it shall have been obtained by fraud or duress on the part of the person before whom such consent, surrender, or other document equivalent to a surrender is acknowledged. * * *." (Ill.Rev.Stat. 1975, ch. 4, par. 9.1-11.)

Petitioner persuasively argues that section 11 is constitutionally void under due process and equal protection standards in that it legislatively precludes invalidation of actions performed under duress, depending on the source of duress. We note that the trial court, by its findings, clearly invited a comprehensive review

of the statute as amended. Although we entertain serious doubts as to the constitutional validity of the statute, we need not resolve that issue. We conclude that the stress petitioner has established, regardless of its source, as a matter of law does not amount to the duress which is necessary to vitiate her consent.

Duress, in the context of consent for adoption, has been defined in numerous decisions. This court's most recent statement on the subject can be found in In re Sims (1975), 30 Ill.App,3d 406, 332 N.E. 2d 36, incorporating previous supreme court pronouncements:

" * * *:

"Duress has been universally defined as a condition which exists where one is induced by the unlawful act of another to make a contract or perform or forego an act under circumstances which will deprive him of the exercise of his free will. There must be such compulsion affecting the mind as shows that the execution of the contract or other instrument was not the voluntary act of the maker. Such compulsion must be present and operate at the time the instrument was executed. The burden of proving such duress is on the person asserting it. [Citations.]

"Mere annoyance or vexation will not constitute duress, but there must be such compulsion affecting the mind as shows that the execution of the contract or

or other instrument is not the voluntary act of the maker. [Citations.]" 'Mere advice, argument or persuasion does not constitute duress or undue influence if the individual acts freely when he executed the questioned documents though the same would not have been executed except for the advice, argument or persuasion [Citations.].'" 30 Ill.App.3d 406, 410-411, 332 N.E.2d 36, 39-40.

Moreover, whether the stress under which an individual acts amounts to the duress necessary to invalidate a consent for adoption must be determined in the context of the public policy favoring finality in the adoption process. We note that the Adoption Act's consent provision has evolved over the years in response to the recognized need for providing a stable and secure environment for the adopted child (In re Wojtkowiak (1975), 14 Ill.App.2d 344, 144 N.E.2d 760), and to protect the parties from the complex psychological problems inherent in permitting a natural parent to withdraw consent. (Drury v. Catholic Home Bureau (1966), 34 Ill.2d 84, 213 N.E.2d 507; In re Adoption of Hoffman (1975), 61 Ill.2d 569, 338 N.E.2d 862.) In Drury, the Illinois Supreme Court noted:

"Admittedly, a mother's decision to consent to her child's adoption by a couple to her unknown must be a most difficult one to make. Strong emotional factors militate against it. Once done, misgivings not only may occur, but are probable, and it is not unlikely that attempts to rescind such consent will be

made at a time when the child has been placed in an adoptive home, and new attachments formed." (34 Ill.2d 84, 93-94, 213 N.E.2d 507,512.)

Our legislature has balanced the needs of the adoption system against the natural inclinations of consenting parents and concluded that such consent is irrevocable in the absence of fraud or duress. We are compelled to enforce such policy, and where the evidence fails to establish fraud or duress, the consent must be given effect.

The record before us reflects a young mother of normal intelligence and normal emotional development. The record also reflects a number of disturbing and vexing problems which she faced. The record is devoid, however, of any evidence suggesting that petitioner's consent was the product of third party persuasion, inducement, deception, or domination. In Sims, this court found duress under conditions quite dissimilar to the instant case. In Sims, the compulsion to consent to adoption was in the form of a specific mandate. There the natural mother's parents "conditioned their parental love of their daughter and their fulfillment of their legal obligation to support her during her minority on her consenting to the adoption." (30 Ill.App.3d 406, 411, 332 N.E.2d 36,40.) The instant record demonstrates, at most, that the possibility of adoption was suggested by an employee of Baby Fold after petitioner, on her own initiative, contacted and visited Baby Fold's place of business. In In re Petition of Huebert

(1971), 132 Ill.App.2d 793, 270 N.E.2d 464, duress was found where adoption had been suggested to the mother by a close friend who had become involved with the mother's husband and who was able to exert undue influence and control over her. There the natural mother's consent was taken during one brief interview at the Department of Public Aid. We agree with the Huebert court and the trial court below that the time period within which the respective consents to adoptions were effected constituted unseemly haste. We are critical of that kind of procedure in such a sensitive area. We encourage the legislature to establish standards commensurate with the importance of the decision involved. We must hold, however, that as a matter of law, mere haste coupled with environmental stress does not constitute duress. Upon the record before us we cannot conclude that petitioner's actions were performed under duress as heretofore defined. Accordingly, we hold that the findings of the trial court were contrary to the manifest weight of the evidence.

The judgment of the circuit court of McLean County is reversed.

Reversed.

SIMKINS, J., concurs; TRAPP, P.J., dissents.

TRAPP, P. J., dissenting:

I would affirm the order of the trial court. The trial court made the finding:

"The facts are in dispute as to whether the petitioner was seeking help and advice in providing proper care for her son, or whether she contacted Baby Fold with the plan of placing him for adoption."

In such context this record shows consummation of the surrender with extraordinary speed. There was an initial interview of approximately two hours on the evening of October 20. On the morning of October 21, respondent called a staff meeting at which the adoptive home was chosen. The reasonable conclusion is that the adopting parents accepted the child without any introduction, for that home was described to petitioner on the evening of October 23, when the surrender was executed. The child was delivered to the adopting parents on the 24th.

So far as the record shows, the child's father was believed to be in California at the time that the child was placed without seeking his consent and that the adopting parents were told that his parental rights would have to be terminated by them in subsequent legal proceedings. It is an apparently fair inference that the respondent concluded that the adoption was deemed to have been finally determined upon at the interview on October 20th.

This is in marked contrast to the facts in the opinions of the Supreme Court which have been cited. In The People ex rel Drury v. Catholic Home Bureau (habeas corpus) (1966), 34 Ill. 2d 84, 213 N.E.2d 507, the record shows that the consenting mother had discussed adoption with her parents, her fiance and one or more doctors and psychiatrists during a period between December, 1963, and June, 1964. The court found from the record that the consenting mother was thoroughly informed as to alternative methods of providing immediate care for the child and that the legal effect of adoption was explained to her in details on two separate occasions. Hence, the court held that the finding of the trial court that the consent was a free and voluntary act was not contrary to the manifest weight of the evidence.

Again, in In re Adoption of Hoffman (1975), 61 Ill. 2d 569, 338 N.E. 2d 862 (C.P.A., sec. 72), the record showed that the parents had discussed the proposed adoption during a period extending from February into July, and it is of great significance that the consequences of the consent to the adoption were fully explained by the judge before whom the consents were executed.

Petitioner argues that the representatives of respondent who interviewed petitioner on October 20, incorrectly interpreted the latter's intentions at such interview. We have noted the court's finding in such regard. Petitioner further points out that such representatives on that date incorrectly inter-

preted a response of petitioner to mean that she had considered surrendering the child for adoption for some six months. The record shows that following petitioner's detailing of her financial problems, one representative said to petitioner:

"So that has been a problem on your mind for quite a while.",

to which Petitioner responded "Yes", and in a further response said she had been thinking of it for six months. Respondent's witness agreed on cross-examination that such response, together with the disputed interpretation of a telephone call, were the basis for a conclusion that petitioner intended to give the child in adoption at the interview on October 20. Consideration of the record discloses that the trial court might have properly concluded that the period of six months mentioned was not meant as a reference to petitioner's consideration of adoption, but rather to the period of her concern over her financial difficulties.

There is evidence in behalf of the respondent that the mother was told on several occasions that the surrender of the child was irrevocable and that the surrender document was read to petitioner before she signed it. Section 13 of "An Act in relation to the adoption of persons ***", (Ill. Rev. Stat. 1973, ch. 4, par. 9.1-13A(a)), makes the execution of a statutory consent but prima facie evidence of the validity of such consent. It is a fair conclusion that the petitioner was not on an equal footing with the respon-

den's representatives in considering the meaning of adoption and the consummation of the surrender. The record does not include any other testimony as to an explanation of alternatives in aid of petitioner's existing financial and personal problems, nor does there appear to have been any further explanation of the meaning of the termination of parental rights. It is significant that when petitioner discovered a source of aid in meeting her avalanche of problems there was a request for the return of the child made on October 28.

The courts have expressed concern with achieving stability and finality in adoption. This case, as with others, suggests the wisdom of a provisional surrender for a reasonable period. Upon such issue of stability this case cannot be measured by the tests of Hoffman, where the action to recover her child was commenced two years after the decree for adoption, or by that in Catholic Home, where a period of six months intervened between the surrender and the habeas corpus porceeding.

The petitioner raised the issue of due process and equal protection of the law under the Constitution in the trial court and here. The trial court found that:

"The totality of the circumstances in this case prevented the petitioner from exercising her free will, and placed her under extreme duress thereby rendering the surrender invalid."

Upon such determination it was unnecessary for the trial court to make a constitutional determination. This court suggests substantial constitutional issues, but declines to consider such and reverses as a matter of law.

In Stanley v. State of Illinois (1972), 405 U.S. 645, 31 L. Ed. 2d 551, 92 S. Ct. 1208, the court stated that parental rights are essential and basic rights entitled to the equal protection of the law and due process under the Constitution of the United States, saying:

"The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection." [405 U.S. 645,651, 31 L. Ed. 2d 551, 558.]

Such language was approved and quoted in Weinberger v. Wiesenfeld (1975), 420 U.S. 636,651, 43 L. Ed. 2d 514, 526, 95 S.Ct. 1225.

We submit that the interest of the mother in this proceeding "warrants deference" equally and that such interest is at least substantially equal in a constitutional sense to that of one charged with a criminal offense. By the rule of Boykin v. Alabama (1969), 395 U.S. 238, 23 L. Ed. 2d 274, 89 S. Ct. 1709, when one charged with a criminal offense enters a plea of guilty the record must show that the individual was informed concerning all of the several rights which he will surrender, and of the consequences incident to his

plea to the end that it can be shown that the individual so acting has full understanding of the matters and acts in an intelligent and voluntary manner. To achieve such constitutional purpose Supreme Court Rules 401 and 402 require solemn judicial admonition of the several rights surrendered and of the consequences of the act.

Hoffman does not address the precise issue of the validity of a "surrender" to an "agency". That opinion had occasion to consider only the acknowledgment of a "consent" to an adoption executed before a circuit judge after he had admonished the parents concerning the nature and consequences of the adoption. The record in that case shows the extent of such admonition and that it indeed served as a source of independent counsel which is not clearly present in this case. It is clear that the court gave great weight to the judicial admonition.

The statute we consider makes the consent irrevocable in the absence of fraud or duress only on the part of one acknowledging the consent or an adopting parent. Fraud and duress are fundamentally concepts of contract or tort. As stated in Stanley;

"It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements'." [405 U.S. 645,

651, 31 L. Ed. 2d 551, 558.]

While the courts have stated that the statute expresses desirable objectives, nonetheless:

"The establishment of prompt efficacious procedures to achieve legitimate state ends is a proper state interest worthy of cognizance in constitutional adjudication. But the Constitution recognizes higher values than speed and efficiency. Indeed, one might fairly say of the Bill of Rights in general, and the Due Process Clause in particular, that they were designed to protect the fragile values of a vulnerable citizenry from the overbearing concern for efficiency and efficacy that may characterize praiseworthy government officials ***."

Here, the trial court found that the surrender at issue was not an understanding voluntary act of the mother. The principal opinion does not determine that such judgment was contrary to the manifest weight of the evidence. It is submitted that in the context of due process and equal protection the judgment below should be affirmed.

APPENDIX C

OPINION AND ORDER OF THE SUPREME COURT OF ILLINOIS, UNITED STATES OF AMERICA

Argued -- June 23, 1977
Decided -- September 20, 1977

BEFORE:
Daniel P. Ward, Chief Justice
Justice Robert C. Underwood
Justice Howard C. Ryan
Justice Thomas J. Moran
Justice Joseph H. Goldenhersh
Justice William G. Clark
Justice James A. Dooley

Appeal from the Decision of the Appellate Court, Fourth District State of Illinois

No. 49046 - Agenda 71

LINDA FAY REGENOLD, Appellant, v. THE BABY FOLD, INC., et al., Appellees

MR. JUSTICE RYAN delivered the opinion of the court:

Linda Fay Regenold filed a petition for writ of habeas corpus in the circuit court of McLean County alleging that she was being unlawfully deprived of the custody of her infant son by the Baby Fold, Inc. Linda had executed a surrender document on October 22, 1975, pursuant to section 10 of the Adoption Act (Ill.Rev. Stat. 1975, ch.4, par. 9.1-10) and had physically surrendered the child to the Baby Fold. She contends that the sur-

render is not valid because it was executed as the result of fraud and duress. The circuit court held the consent invalid and ordered the return of the infant. The appellate court reversed with one justice dissenting. (42 Ill.App. 3d 39.) We granted Linda's petition for leave to appeal.

It is Linda position that the totality of the circumstances surrounding the execution of the surrender document was such that she was placed under so much stress that the execution of the document was not her free and voluntary act. She also contends that the Baby Fold participated in the fraud and duress, as will later be discussed. The Baby Fold contends that pursuant to the statute (Ill. Rev. Stat. 1975, ch. 4, par. 9.1-11) the surrender document was irrevocable unless it was obtained by fraud or duress on the part of the Baby Fold; that the conduct of the Baby Fold did not amount to fraud or duress; that under the present statute the totality of the circumstances is not relevant, and even if relevant the total picture is not one of fraud or duress as heretofore recognized by the courts of this State.

Linda graduated from Bloomington High School in the spring of 1974. She applied for and was granted admission to Illinois State University in Normal. She did not enter the university, however, because in August 1974 she gave birth to the child who is the subject of this litigation. She had been pregnant several months before her marriage to the child's father on

April 4, 1974. During this marriage she and her husband (and their son after his birth) continued to live with her mother and father and her two brothers. One brother was 18 years old and the other one was 3 years old. The 3-year-old was retarded as a result of an illness. Her husband would not work and, in June, 1975, he left the home. She procured a divorce in September 1975.

Linda apparently secured employment before her husband left the home and continued to work thereafter. Her earnings, however, were insubstantial. From these she had to pay $100 per month for a baby sitter while she worked, and she also had to pay her mother rent. She was indebted to a doctor for the delivery of her son. She was also indebted for a hospital bill and owed an attorney for legal services related to her divorce. In addition she had a car loan and premiums to pay on her automobile insurance. She stated she had sought financial aid through different public agencies to no avail.

In September and October of 1975, she was under a doctor's care and was taking medication for an infection. The doctor told her if the medication did not remedy the ailment surgery would be required. The record does not reflect that surgery was ever performed. During this time her mother and father were having marital difficulties and were constantly arguing. Her mother told Linda that she was going to divorce Linda's father and sell the house, in which event Linda would have

to move out and get a place of her own. Also, her mother was constantly reminding her that she was not paying enough rent. Her 3-year-old brother was partially crippled and according to Linda, a little slow and "[h]e doesn't catch onto things very fast." Her brother was jealous of her son and would throw toys at him and try to knock him down. Linda also testified that during this period of time she was under considerable stress at her place of employment and was required to do the work load of about three people.

On October 20, 1975, Linda phoned the Baby Fold. According to Linda she told the person to whom she talked on the phone that she wanted someone to talk to. She was told she could come in that evening. When she arrived at the Baby Fold she talked to Martha Price, a social worker. They discussed Linda's situation for about an hour and a half, during which time Linda related all of her problems. Accordin to Linda, the social worker then stated that adoption could be a solution because it would relieve Linda of some of the financial obligations. Linda stated that this was the first time adoption had been mentioned. She also stated that the social worker did not mention any alternate solutions to her problems other than adoption, such as temporary foster care for the child or other sources of financial aid.

The testimony of the members of the Baby Fold staff concerning this first meeting differs somewhat from that given by Linda. Margaret Cunningham, the director of social services at the Baby

Fold, testified that on October 20, 1975, at about 5 p.m., she received a phone call from Linda, who said she was interested in talking to someone about placing her child for adoption. The director invited her to come in that evening, which she did. When she arrived she was referred to Martha Price, the social worker, for the interview, during which time the social worker took notes which were subsequently expanded and have been introduced into evidence. Marcia Comeford, a student who was doing field work with the Baby Fold, was also present during the interview. Both of these staff members testified, and the expanded notes of the interview support this testimony, that following a discussion of Linda's problems Mrs. Price asked, in effect, if that was the reason she had been thinking about placing her child for adoption, and that Linda had stated it was. They also testified that there was a discussion concerning other sources of financial assistance. Linda had explored these alternatives, such as family help, financial assistance from her ex-husband, public aid, and assistance from the township. No financial aid was available from these sources. These witnesses also testified that Linda had stated that she did not want her son placed in a foster home. Mrs. Price testified that they also discussed some help for the 3-year-old brother through the local school district, which might help remove the conflict that existed between the two infants. Several times during the interview they stated that Linda was asked if she still considered adoption as a solution and she affirmed that she did. Mrs. Price also

testified that Linda said she felt that she, as a single parent, could not provide for her son what two parents could provide for a child. The witnesses stated that the adoption process was explained to her and that she was informed that if she executed a surrender it would be final and irrevocable. She was then asked to fill out a social history form, after which she was asked when she would like to bring her son and execute the surrender form. She stated that she would need a day or two to get his clothes together, and it was agreed that she would return with her son on October 22, two days later. She stated that she would like her son to have his bed because it might help him to adjust in a new environment. She asked Mrs. Price if she would have someone come and get the bed.

The next day, October 21, Mrs. Price called Linda and told her that someone from the Baby Fold could come and get the bed if she still desired to surrender her son. Linda suggested that the bed be picked up the following afternoon, October 22, and stated that she would bring her son to the Baby Fold the same evening.

Linda and her son arrived at the Baby Fold about 6 p.m. on October 22. Mrs. Price asked her how she felt about her decision to place her son for adoption, and she indicated that she wanted to continue with the plan. Marsha Ideus, another social worker at the Baby Fold, was asked to join in the interview. She described to Linda the family with which the Baby Fold had decided to place the infant. Linda stated that this made her feel

better. Mrs. Price then filled in the surrender document, gave a copy of it to Linda, and read it to her and asked her if that is what she wanted to do. Linda stated that it was, that it was her free and voluntary act, and that she understood that after signing the document she could not change her mind. She then signed the surrender document in the presence of Mrs. Price, who later signed the certificate of acknowledgment as prescribed by statute (Ill. Rev. Stat. 1975, ch. 4, par. 9.1-10). Mrs. Price then helped Linda bring in a box of the child's clothes from Linda's car. Linda then gave Mrs. Price the infant's birth certificate and a baby picture which she said she wanted the family and her son to have. She stated she had forgotten to bring his immunization record, which she would bring later because it showed the shots that her son needed. Mrs. Price asked her to bring a copy of her divorce decree when she came.

She returned two days later, October 24, with her divorce decree and the immunization record. She and Mrs. Price discussed the placement of her son and also discussed her future plans, which included further education, better employment, and moving from her parents' home, which she was in the process of doing.

Linda testified that she felt that after the first visit to the Baby Fold on October 20, when she filled out the social history form she had to go through with the placing of her child for adoption even though she did not sign the surrender document until two days later on October 22. Her 18-year-old brother testified

that, before Linda went to the Baby Fold on October 22, he asked her why she was giving up her son and that Linda stated that she couldn't back out now.

About four days after Linda surrendered her child, she went to the home of Mr. and Mrs. Ernest Adams, from whom she often sought parental guidance. She was crying and stated that she wanted to get her baby back. Mr. and Mrs. Adams undertook to secure an attorney to represent her. Linda testified that she always conferred with Mr. and Mrs. Adams on all major decisions; however, she had not consulted them about placing her child for adoption.

Dr. Arthur Traugott, a psychiatrist, testified on behalf of Linda. He stated hypothetically that a young woman faced with Linda's problems was subject to pressures which would impair rational judgment. Inasmuch as she did not consult with Mr. and Mrs. Adams about placing her child for adoption, as she had done in all of her other major decisions, she was not following her normal decision-making process and he did not think that her decision to surrender her child was free and voluntary. He felt that she was acting under compulsion and made an impulsive decision to rid herself of some of her burdens. He stated that the fact that the Baby Fold did not inform Linda of the various alternatives to adoption deprived her of an opportunity to make a rational decision.

The basic factual dispute is whether Linda was seeking help and advice concerning the care of her son when she made her

initial visit to the Baby Fold on October 20, 1975, or whether she made the initial contact with the idea of placing her son for adoption. There is no serious conflict in the evidence concerning the other factual matters.

The trial court, in determining that the execution of the surrender was the product of duress, applied the totality of the circumstances test and found that the Baby Fold, by failing to make meaningful attempts to solve Linda's problems by acting with "unseemly haste" in taking the surrender, and by accepting the surrender from someone subject to the assorted pressures facing Linda, became a subtle active participant in the chain of events which denied Linda the exercise of her free will and deprived her of her infant son.

Prior to 1953 it was generally held by the courts of this State that the right of a natural parent to withdraw a consent to adoption before the entry of an adoption decree rested in the sound discretion of the court. (See 1 Ill. L. & Prac. Adoption sec. 21 (1953).) In 1953, the General Assembly added section 3-7 to the Adoption Act of 1945 as it then existed (Ill. Rev. Stat. 1953, ch.4, par.3-7), which, as we stated in In re Simaner, 15 Ill. 2d 568, 577, provided:

"A consent to adoption executed and witnessed or acknowledged in accordance with the provisions of Section 3-6 of this Act shall be irrevocable unless it shall have been obtained by fraud or

duress and a court of competent jurisdiction shall so find."

In Simaner, it was contended that the right to determine whether a consent could be withdrawn was a judicial function and that the irrevocable provision of the statute was invalid. This court held that "adoption is a question for the State, in the discharge of its duty as parens patriae, to regulate through its legislature as to it seems wise, hence judicial proceedings are not essential***." (15 Ill. 2d 568, 579.) The salutory effect of ths stabilizing influence of the amendment upon adoption proceedings was recognized both by this court in People ex rel. Drury v. Catholic Home Bureau, 34 Ill. 2d 84 and by the appellate court in In re Wojtkowiak, 14 Ill. App. 2d 344, and was viewed as an expression of sound public policy by the legislature.

In applying the irrevocable consent provision of the 1953 statute, the courts of this State adopted a totality of the circumstances test in determining whether in fact the consent was executed as a result of fraud or duress. (See People ex rel. Drury v. Catholic Home Bureau; In re Huebert, 132 Ill.App. 2d 793; People ex rel. Buell v. Bell, 20 Ill.App.2d 82.) In 1973, the legislature again amended the consent provision of the Adoption Act, requiring that the fraud or duress necessary to invalidate an otherwise irrevocable consent must have been "on the part of the person before whom such consent, surrender, or other document ***

is acknowledged pursuant to the provisions of Section 10 of this Act or on the part of the adopting parents or their agents." Ill.Rev.Stat. 1973, ch.4, par. 9.1-11.

Before considering the substantive issues involved in this appeal, it is necessary to decide the question of the quantum of proof required, which question appears never to have been resolved by this court. It has been established in other areas of the law that fraud must be proved by clear and convincing proof. (In re Thompson, 30 Ill. 2d 560 (attorney disciplinary proceeding); Horney v. Hayes, 11 Ill. 2d 178 (suit to set aside sale of beneficial interest in a land trust); Finney v. White, 389 Ill. 374 (suit to set aside a deed).) Also, in Hotze v. Schlanser, 410 Ill.265, in defense of a suit for specific performance of a contract for a sale of real estate, the defendant contended that her signature was obtained by coercion and fraud. This court held that the evidence concerning the affirmative defense "must be clear and cogent and must leave the mind well satisfied that the allegations are true." (410 Ill. 265,269.) In Bernstein v. Bernstein, 398 Ill. 52, a suit to set aside deeds alleging fraud, this court, after stating the general rule that fraud must be proved by clear and convincing proof, considered the fact that the deeds had been duly acknowledged as required by statute. The court held that to overcome the certificate of acknowledgment to a deed "clear and satisfactory proof is required." (398 Ill. 52,55.) In 32A C.J.S. Evidence sec. 1023, at 664 (1964), in discussing clear and convin-

cing evidence, the author states:

"Instruments which have established legal rights and warrant great reliance may not be contradicted, except by this degree of proof."

In our case Linda signed a document entitled "Final and Irrevocable Surrender for Purposes of Adoption." It recites that she had read and understood the document and stated "I am signing it as my free and voluntary act." It contains a certificate, as required by the Act, signed by Martha Price, a social worker, stating that Linda acknowledged before her that she signed it as her free and voluntary act, and that Mrs. Price had fully explained to her that by signing the surrender she irrevocably relinquished all parental right to the child and that she stated that such was her intention and desire. The certificate was duly acknowledged by Mrs. Price before a notary public in conformance with the requirements of the statute. The purpose of the formal statutory requirements in the execution of this document is to add stability and certainty to adoption proceedings. Drastic consequences and far-reaching changes stem from the execution of such a document, and substantial rights are based thereon. The legislature has not only attempted to add certainty to the adoption proceedings resulting from the execution of such a document, but the formal requirements in its execution have been tailored to insure that the surrender is the free and voluntary act of the mother and that she fully understands the importance of it and the con-

sequences of executing it. Sound policy requires that a person should not be permitted to easily repudiate this document which complies with the formal requirements of the statute. To preserve the legialative policy a court should not set aside a consent or a surrender executed in accordance with the Adoption Act unless the one seeking to invalidate the document proves by clear and convincing evidence that its execution was procured by fraud or duress. In this case we hold that Linda has not sustained this burden of proof.

In People ex rel. Drury v. Catholic Home Bureau, in defining "duress" as that term is used in the Adoption Act, this court adopted the definition that had been applied in cases involving conveyances and commercial transactions and stated:

" 'Duress has been universally defined as a condition which exists where one is induced by the unlawful act of another to make a contract or perform or forego an act under circumstances which will deprive him of the exercise of his free will. There must be such compulsion affecting the mind as shows that the execution of the contract or other instrument was not the voluntary act of the maker. Such compulsion must be present and operate at the time the instrument was executed. The burden of proving such duress is on the person asserting it. [Citations.]

'Mere annoyance or vexation will not constitute duress, but there must be such compulsion affecting the mind as shows

that the execution of the contract or other instrument is not the voluntary act of the maker. [Citations.]'

Mere advice, argument or persuasion does not constitute duress or undue influence if the individual acts freely when he executed the questioned documents though the same would not have been executed except for the advice, argument or persuasion. [Citations.]"(34 Ill. 2d 84,92-93.)

In restatement of Contracts section 492 (1932) duress is defined as:

"(a) any wrongful act of one person that compels a manifestation of apparent assent by another to a transaction without his volition, or

(b) any wrongful threat of one person by words or other conduct that induces another to enter into a transaction under the influence of such fear as precludes him from exercising free will and judgment, if the threat was intended or should reasonably have been expected to operate as an inducement."

The Restatement does not use the term "unlawful act" that this court used in Drury, but instead uses "wrongful" as the descriptive adjective. This appears to be the meaning generally applied to "unlawful" in modern cases involving duress. (See 25 Am.Jur. 2d Duress and Undue Influence sec.3 (1966).) Thus, acts, to be avoided, must have been induced by a wrongful act or wrongful threats. In Kaplan v. Kaplan, 25 Ill.2d 181, 186,

this court stated: "Any wrongful threat which actually puts the victim in such fear as to act against his will constitutes duress***." The court then held that a wife's threat to publicize pictures taken of her husband and another woman in the other woman's apartment, by suing for alienation of affection, did not constitute duress in support of her husband's suit to set aside a property settlement. The court held that it was not duress for the wife to threaten to institute a suit to enforce what she believed to be her legal right. The court also held that the threat to publicize the pictures by other means calculated to embarrass her husband also did not constitute duress. In our case we find nothing in the entire record that would constitute duress under the accepted definition. Although Linda's personal life was subject to many unsettling influences, such as her unhappy marriage, her divorce, her quarreling mother and father, the conflict between her 3-year-old brother and her son, the pressures of her work, her financial problems and her health, none of these factors constituted a threat of a wrongful act. The only conduct resembling a threat in this picture consists of the arguments between Linda and her mother, and the mother's statement that Linda would have to move out because she and Linda's father were going to get a divorce and that they were going to sell the house. Even if this can be construed to be a threat, it was certainly not wrongful. Linda was of legal age and was employed, and the parents were under no obligation to support her.

As to the Baby Fold, we find nothing in the record that constitutes a threat of any kind stemming from the conduct of the members of its staff, and there was no wrongful act on its part within the meaning of the term as used in Restatement of Contracts sections 492(a) and 494. The wrongful act there described induces assent to a supposed transaction different from that to which the apparent assent is manifested, or the manifestation of assent induced by the wrongful act is in effect the physical act of another. Section 494, Comment a.

In defining fraud, this court, in People ex rel, Chicago Bar Association v. Gilmore, 345 Ill. 2d 28, 46, stated:

"Fraud includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth of the suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth or by look or gesture."

Although the trial court made no mention of fraud in its order and appears to have based its decision on the presence of duress in the totality of the surrounding circumstances, in this court Linda complains that the appellate court failed to consider the existence of fraud. She urges that the acceptance of the surrender from a person subject to the assorted pressures that faced her, the totality of the circumstances that prevented her from exercising her free will, the "acting with unseemly haste in taking the surrender,"

the presentation of adoption as the only viable solution to her problems, and the failure to make a meaningful attempt to solve her problems, all combined to bring the conduct of the Baby Fold within the Gilmore definition of fraud.

We view this contention as a strained effort to bring the facts of this case within the definition of Gilmore. In In re Adoption of Hoffman, 61 Ill.2d 569, 578, this court, after quoting the definition from Gilmore, added "'the concept of fraud "implies a wrongful intent-an act calculated to deceive."' (Exline v. Weldon (1974), 57 Ill. 2d 105, 110.) We have also observed that 'A misrepresentation in order to constitute a fraud must consist of a statement of material fact, false and known to be so by the party making it, made to induce the other party to act, and, in acting, the other party must rely on the truth of the statement.' Roth v. Roth (1970), 45 Ill.2d 19,23."

Not even Linda suggests that anything the Baby Fold staff members did, or failed to do, involved a wrongful intent or was calculated to deceive, or that any action or inaction by the Baby Fold staff was for the purpose of inducing her to surrender the child. The allegation of fraud is so patently not supported by clear and convincing proof that we consider it unnecessary to further review the various conversations between Linda and the staff members.

We, as well as the appellate court, have applied the totality of the circum-

stances test to this case. That is, we have considered all of the facts and circumstances surrounding the execution of the surrender document to ascertain if any fraud or duress induced its execution. This is the procedure urged by Linda and is in keeping with the practice followed in applying the Act prior to the 1973 amendment. However, we can only view the 1973 amendment, which required that the fraud or duress be "on the part of the person before whom such consent, surrender, or other document *** is acknowledged*** or on the part of the adopting parents or their agents" (Ill.Rev.Stat.1973, ch.4, par.9.1-11), as a repudiation by the legislature of the totality approach. It clearly is an attempt on the part of the legislature to add further stability and certainty to adoption proceedings. Linda urges that such a limitation unconstitutionally deprives a natural parent of due process and equal protection of the law, arguing that it is immaterial from what source the influence or duress stems.

We do not see that a violation of constitutional rights is involved in this case. Adoption proceedings were unknown to the common law and are solely the creation of statutory enactment. (1 Ill.L.& Prac. Adoption sec. 3 (1953).) The legal status of adoption does not exist independently of statutory authority. It is therefore incumbent upon the legislature to prescribe the conditions and procedures that must be followed in creating the relationship of parent and child between persons not so related by nature. 2 Am.Jur.2d Adoption sec.2 (1962).

Also, it is well recognized that the State, as parens patriae, is authorized to legislate for the protection of the children within its jurisdiction. (42 Am.Jur.2d Infants secs. 14, 15 (1969).) This court long ago acknowledged the right and duty of the State to legislate for the protection and welfare of its infants when it stated, in County of McLean v. Humphreys, 104 Ill.378,383:

"It would be difficult to conceive of a class of persons that more imperatively demands that interposition of the State in their behalf than those we have just enumerated, and for whose benefit the act under consideration was adopted, and it would be a sad commentary on our State government, if it is true, as is contended, there is no constitutional power in the legislature to provide, by suitable legislation, for their education, control and protection. It is the unquestioned right and imperative duty of every enlightened government, in its character of parens patriae, to protect and provide for the comfort and well-being of such of its citizens as, by reason of infancy, defective understanding, or other misfortune or infirmity, are unable to take care of themselves. The performance of this duty is justly regarded as one of the most important of governmental functions, and all constitutional limitations must be so understood and construed as not to interfere with its proper and legitimate exercise."

It is apparent, then, that the case we are now considering involved two areas (adoption and the welfare of children)

which are peculiarly within the province of legislative action. Balanced against this area of primary State concern is the right of a parent to the custody of her child, which has been recognized as a right encompassed within the protection of the fourteenth amendment which "may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect." Meyer v. Nebraska 262 U.S.390, 399-400, 67 L.Ed. 1042, 1045, 43 S.Ct. 625,627.

It is apparent that the legislative restriction on the revocability of consent imposed by the 1973 amendment is reasonably related to the State's authority to legislate with regard to the adoption of children and for their general welfare. This court, in People ex rel. Drury, noted the difficulties in the pre-1953 practice when a mother had a right to revoke her consent to adoption at any time before the entry of an adoption decree, subject to the discretion of the trial judge.

However, the 1953 amendment did not fulfill the legislature's hope of removing the uncertainty surrounding the effectiveness of a consent or a surrender executed by the parent. Through judicial construction which permitted consideration of all facts and circumstances surrounding the execution of the document, a hearing on the issue of revocation following the 1953 amendment closely resembled a similar hearing prior to that amendment, and similar evidence was considered in both hearings. In

effect, under this construction of the 1953 amendment, revocation of consent or surrender would be authorized on pretty much the same evidence as in pre-amendment cases. Thus, by the 1973 amendment, the legislature has again attempted to achieve the stability of adoption and the welfare of the adopted children which this court considered within the competence of the State to effect.

To achieve this purpose the legislature has adopted the requirements that have long been applied to the remedy of rescission in other areas of the law. The general rule in contract cases holds that the validity of the contract is not affected by the fact that its execution was induced by duress practiced by a third party, where the duress was not committed with the knowledge or consent of the obligee. This general rule has been applied to suits to set aside deeds, trust deeds, mortgages, certificates of acknowledgment, compromises and settlements of claims, and assignments, as well as in suits to annul marriages or avoid the obligations of a note or a bond. (See Annot.,4A.L.R. 864 (1919); Annot., 62 A.L.R. 1477 (1929); see also Marston v. Brittenham, 76 Ill.611,617; Ladew v. Paine, 82 Ill.221; Compton v. Bunker Hill Bank, 96 Ill.301; Schwartz v. Schwartz, 29 Ill.App.516; Short v. Short,265 Ill.App.133; Smith v. Saum,324 Ill.App.299.) This general rule is also found in the Restatement. Restatement of Contracts secs. 492-99(1932).

Linda, in opposing the application of the general rule, posits a hypothetical situation wherein the natural father of the child threatens to kill both the child

and the mother unless she surrenders the child for adoption. Linda argues that under the general rule a consent executed under these circumstances would not be revocable. We note initially that no such extreme factual situation is present in this case and we need not decide the validity of a consent executed under these conditions. We not, however, that the general rule has been applied in other areas of the law for many years. In some States it has been applied to marriages entered into by the husband under threats of death or bodily harm from third persons. (See Annot.,16 A.L.R.2d 1430 (1951).) The courts, in the general application of this rule, have obviously been cognizant of the rights of individuals and afforded them such protection as is required to avoid constitutional violations. We also note that the Restatement of Contracts section 494 (1932) deals with certain extreme situations wherein duress from whatever source renders the transaction void. We are confident that a court faced with the extreme situation hypothesized, in the exercise of its equity authority, will be able to protect the interests of all parties.

Ordinarily only drastic and extremely unusual circumstances will induce a natural mother to surrender her child. We recognize the circumstances Linda faced as being particularly vexing, and she was undoubtedly induced by the absolute hopelessnes of the picture to surrender her child. She, as do many mothers faced with similar conditions, came to accept adoption as the only solution. At another place or time

these same mothers might reject such a solution as being out of the question. In most circumstances following the surrender, the mothers will have second thoughts as to the wisdom of their decisions. Nonetheless, so many significant rights and events depend upon the certainty of the surrender that the legislature, in an expression of sound public policy, in order to add stability to adoption proceedings and to further the welfare of the children involved, has determined that the surrender should only be revocable if"it shall have been obtained by fraud or duress on the part of the adopting parents or their agents" (Ill.Rev.Stat. 1975, ch.4, par.9.1-11). This is peculiarly within the competence of that body, and the judiciary should not attempt to alter or abrogate that clearly expressed legislative determination.

The judgment of the appellate court, which reversed the circuit court of McLean County, is affirmed.

Judgment affirmed.

MR. JUSTICE UNDERWOOD took no part in the consideration or decision of this case.

CLARK and MORAN, JJ., dissenting.

APPENDIX D

STATUTORY AUTHORITY

Chapter 4, Illinois Revised Statutes, Section 9.1-10C.

The form of surrender to any agency given by a parent of a born child who is to be subsequently placed for adoption shall be substantially as follows and shall contain such other facts and statements as the particular agency shall require.

FINAL AND IRREVOCABLE SURRENDER FOR PURPOSES OF ADOPTION

I, ... (relationship, e. g., mother, father, relative guardian) of ....., a ..male child, state:

That I reside at ....., County of ....., and State of .....

That I am of the age of ..... years.

That I do hereby surrender and entrust the entire custody and control of such child to the ..... (the "Agency"), a (public) (licensed) child welfare agency with its principal office in the City of ....., County of ..... and State of ....., for the purpose of enabling it to care for and supervise the care of such child, to place such child for adoption and to consent to the legal adoption of such child.

That I hereby grant to said Agency full power and authority to place such child with any person or persons it may

in its sole discretion select to become the adopting parent or parents and to consent to the legal adoption of such child by such person or persons; and to take any and all measures which, in the judgment of said Agency, may be for the best interest of such child, including authorizing medical, surgical and dental care and treatment including inocultion and anaesthesia for such child.

That I wish to and understand that by signing this surrender I do irrevocably and permanently give up all custody and other parental rights I have to such child.

That I understand I cannot under any circumstances, after signing this surrender, change my mind and revoke or cancel this surrender or obtain or recover custody or any rights over such child.

That I have read and understand the above and I am signing it as my free and voluntary act.

Dated this ..... day of ....., 19..

.....

Chapter 4, Illinois Revised Statutes, Section 9.1-11.

A consent to adoption by a parent, including a minor, executed and acknowledged in accordance with the provisions of Section 8 of this Act, or a surrender

of a child by a parent, including a minor, to an agency for the purpose of adoption shall be irrevocable unless it shall have been obtained by fraud or duress on the part of the person before whom such consent, surrender, or other document equivalent to a surrender is acknowledged pursuant to the provisions of Section 10 of this Act or on the part of the adopting parents of their agents and a court of competent jurisdiction shall so find. The consent or surrender of a parent who is a minor shall not be voidable because of such minority.

APPENDIX E

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution--Amendment V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution--Amendment XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priveleges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX F

No. 49046

IN THE

SUPREME COURT OF ILLINOIS

LINDA FAY REGENOLD,
Petitioner-Appellant,

vs

RICHARD RILEY and PRISCILLA RILEY and THE BABY FOLD, INC.,
Respondents-Appellees.

APPEAL FROM THE
APPELLATE COURT OF
ILLINOIS, FOURTH DISTRICT

THERE HEARD ON FROM
THE CIRCUIT COURT OF
MC LEAN COUNTY, ILLINOIS

HONORABLE JAMES A. KNECHT
PRESIDING

NOTICE OF APPEAL

TO THE

SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Linda Fay Regenold, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final decree of the Supreme Court of Illinoia affirming the opinion of the Appellate Court of the Fourth District of Illinois, entered in this action on September 20, 1977.

This appeal is taken purusant to Title 28, United States Code, Section 1257, subparagraph (2).

Dated: February 23, 1978.

LINDA FAY REGENOLD,
Petitioner-Appellant

By: _____
Craig Homer Grennwood,
Her Attorney
Attorney at Law
206 Albert
Bloomington, Ill. 61701
Phone: 309-829-5303